

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LANCE MITCHELL DRUCKERMAN,

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

Case No. EDCV 13-01836-JEM

MEMORANDUM OPINION AND
ORDER AFFIRMING DECISION OF
THE COMMISSIONER OF SOCIAL
SECURITY

PROCEEDINGS

On October 16, 2013, Lance Mitchell Druckerman ("Plaintiff" or "Claimant") filed a complaint seeking review of the decision by the Commissioner of Social Security ("Commissioner") denying Plaintiff's application for Social Security Disability and Disability Insurance benefits. The Commissioner filed an Answer on February 6, 2014. On July 3, 2014, the parties filed a Joint Stipulation ("JS"). The matter is now ready for decision.

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record ("AR"), the Court concludes that the Commissioner's decision must be affirmed and this case dismissed with prejudice.

BACKGROUND

Plaintiff is a 53-year-old male who applied for Social Security Disability and Disability Insurance benefits on March 30, 2009, alleging disability beginning September 5, 2008. (AR 114.) The ALJ determined that Plaintiff has not engaged in substantial gainful activity since September 5, 2008, the alleged onset date. (AR 116, 150.)

Plaintiff's claim was denied initially on July 21, 2009. (AR 114.) Plaintiff filed a timely request for hearing, which was held before Administrative Law Judge ("ALJ") Sally C. Reason, on March 22, 2010, in West Los Angeles, California. (AR 114.) Plaintiff appeared and testified at the hearing and was represented by counsel. (AR 114.) Vocational expert ("VE") Gregory S. Jones also appeared and testified at the hearing. (AR 114.)

The ALJ issued an unfavorable decision on July 21, 2010. (AR 114-134.) Plaintiff requested review of the decision with the Appeals Council. (AR 25-27.) The Appeals Council granted the request for review, found legal error in the ALJ's decision, and vacated and remanded for further administrative proceedings. (AR 141-143.)

On January 11, 2012, Plaintiff appeared and testified at a hearing before ALJ Sally C. Reason, in West Los Angeles, California. (AR 148.) Plaintiff was represented by counsel. (AR 148.) Medical expert ("ME") Glenn E. Griffin, Ph.D., and VE Lynne Tracy, also appeared and testified. (AR 148.) A supplemental hearing took place on March 22, 2012, also in West Los Angeles, California. (AR 148.) Plaintiff appeared and testified and was represented by counsel. (AR 148.) VE Gregory Jones also appeared and testified. (AR 148.)

The ALJ issued a second unfavorable decision on April 16, 2012. (AR 148-170.) Plaintiff again requested review of the decision with the Appeals Council. (AR 27.) The Appeals Council denied the request for review. (AR 6-12.)

DISPUTED ISSUES

As reflected in the Joint Stipulation, Plaintiff raises the following disputed issues as grounds for reversal and remand:

1. Whether the ALJ properly determined that Lance Druckerman could perform the past relevant work ("PRW").
2. Whether the ALJ properly considered the testimony of Lance Druckerman.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and based on the proper legal standards).

Substantial evidence means "'more than a mere scintilla,' but less than a preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson, 402 U.S. at 401 (internal quotation marks and citation omitted).

This Court must review the record as a whole and consider adverse as well as supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where evidence is susceptible to more than one rational interpretation, the ALJ's decision must be upheld. Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999). "However, a reviewing court must consider the entire record as a whole and may not affirm simply by isolating a 'specific quantum of supporting evidence.'" Robbins, 466 F.3d at 882 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007).

THE SEQUENTIAL EVALUATION

The Social Security Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or . . . can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. §§ 423(d)(1)(A),

1 1382c(a)(3)(A). The Commissioner has established a five-step sequential process to
2 determine whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920.

3 The first step is to determine whether the claimant is presently engaging in
4 substantial gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the
5 claimant is engaging in substantial gainful activity, disability benefits will be denied.
6 Bowen v. Yuckert, 482 U.S. 137, 140 (1987). Second, the ALJ must determine whether
7 the claimant has a severe impairment or combination of impairments. Parra, 481 F.3d at
8 746. An impairment is not severe if it does not significantly limit the claimant's ability to
9 work. Smolen, 80 F.3d at 1290. Third, the ALJ must determine whether the impairment
10 is listed, or equivalent to an impairment listed, in 20 C.F.R. Pt. 404, Subpt. P, Appendix I
11 of the regulations. Parra, 481 F.3d at 746. If the impairment meets or equals one of the
12 listed impairments, the claimant is presumptively disabled. Bowen, 482 U.S. at 141.
13 Fourth, the ALJ must determine whether the impairment prevents the claimant from
14 doing PRW. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001). Before
15 making the step four determination, the ALJ first must determine the claimant's residual
16 functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can
17 still do despite [his or her] limitations" and represents an assessment "based on all the
18 relevant evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must
19 consider all of the claimant's impairments, including those that are not severe. 20 C.F.R.
20 §§ 416.920(e), 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

21 If the claimant cannot perform his or her PRW or has no PRW, the ALJ proceeds
22 to the fifth step and must determine whether the impairment prevents the claimant from
23 performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864, 869 (9th
24 Cir. 2000). The claimant bears the burden of proving steps one through four, consistent
25 with the general rule that at all times the burden is on the claimant to establish his or her
26 entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is
27 established by the claimant, the burden shifts to the Commissioner to show that the
28 claimant may perform other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111,

1 1114 (9th Cir. 2006). To support a finding that a claimant is not disabled at step five, the
2 Commissioner must provide evidence demonstrating that other work exists in significant
3 numbers in the national economy that the claimant can do, given his or her RFC, age,
4 education, and work experience. 20 C.F.R. § 416.912(g). If the Commissioner cannot
5 meet this burden, then the claimant is disabled and entitled to benefits. Id.

6 THE ALJ DECISION

7 In this case, the ALJ determined at step one of the sequential process that Plaintiff
8 has not engaged in substantial gainful activity since September 5, 2008, the alleged
9 onset date. (AR 116, 150.)

10 At step two, the ALJ determined that Plaintiff has the following medically
11 determinable severe impairments: HIV positive; history of bilateral wrist surgery; left
12 knee surgery; right shoulder surgery; bilateral foot surgery; acid reflux; obesity; and
13 hypertension. (AR 150-156.)

14 At step three, the ALJ determined that Plaintiff does not have an impairment or
15 combination of impairments that meets or medically equals the severity of one of the
16 listed impairments. (AR 156-158.)

17 The ALJ then found that Plaintiff has the RFC to perform light work as defined in
18 20 C.F.R. § 404.1567(b) except he can sustain occasional keyboarding 30 minutes at a
19 time, up to 4 hours in an 8 hour day; he can sustain occasional overhead reaching with
20 the right (dominant) upper extremity; and he can sustain frequent (not constant) fine
21 hand manipulation, bilaterally. (AR 158-169.) In determining this RFC, the ALJ made an
22 adverse credibility determination. (AR 160.)

23 At step four, the ALJ found that Plaintiff is capable of performing his PRW as an
24 office manager as it is generally performed. (AR 169.)

25 Consequently, the ALJ found that Claimant was not disabled, within the meaning
26 of the Social Security Act. (AR 170.)

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DISCUSSION

The ALJ properly discounted Plaintiff's credibility in determining Plaintiff's RFC. The ALJ properly found that Plaintiff can perform his PRW as an office manager as it is generally performed.

The ALJ's RFC and PRW determinations are supported by substantial evidence. The ALJ's nondisability determination is supported by substantial evidence and free of legal error.

I. THE ALJ PROPERLY DISCOUNTED PLAINTIFF'S CREDIBILITY

The ALJ found that Plaintiff has the medically determinable severe impairments of HIV positive, history of bilateral wrist surgery, left knee surgery, right shoulder surgery, bilateral foot surgery, acid reflux, obesity and hypertension. (AR 150.) Nonetheless, the ALJ found that Plaintiff retained the residual functional capacity to perform a limited range of light work. (AR 158.) Plaintiff does not challenge the ALJ's treatment of the medical evidence but contends that the ALJ improperly discounted Plaintiff's subjective symptom testimony in determining Plaintiff's RFC. The Court disagrees.

A Relevant Federal Law

The ALJ's RFC is not a medical determination but an administrative finding or legal decision reserved to the Commissioner based on consideration of all the relevant evidence, including medical evidence, lay witnesses, and subjective symptoms. See SSR 96-5p; 20 C.F.R. § 1527(e). In determining a claimant's RFC, an ALJ must consider all relevant evidence in the record, including medical records, lay evidence, and the effects of symptoms, including pain reasonably attributable to the medical condition. Robbins, 446 F.3d at 883.

The test for deciding whether to accept a claimant's subjective symptom testimony turns on whether the claimant produces medical evidence of an impairment that reasonably could be expected to produce the pain or other symptoms alleged. Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991); see also Reddick, 157 F.3d at 722; Smolen, 80 F.3d at 1281-82 esp. n.2. The Commissioner may not discredit a claimant's

1 testimony on the severity of symptoms merely because they are unsupported by
2 objective medical evidence. Reddick, 157 F.3d at 722; Bunnell, 947 F.2d at 343, 345. If
3 the ALJ finds the claimant's pain testimony not credible, the ALJ "must specifically make
4 findings which support this conclusion." Bunnell, 947 F.2d at 345. The ALJ must set
5 forth "findings sufficiently specific to permit the court to conclude that the ALJ did not
6 arbitrarily discredit claimant's testimony." Thomas v. Barnhart, 278 F.3d at 947, 958 (9th
7 Cir. 2002); see also Rollins v. Massanari, 261 F.3d 853, 856-57 (9th Cir. 2001); Bunnell,
8 947 F.2d at 345-46. Unless there is evidence of malingering, the ALJ can reject the
9 claimant's testimony about the severity of a claimant's symptoms only by offering
10 "specific, clear and convincing reasons for doing so." Smolen, 80 F.3d at 1283-84; see
11 also Reddick, 157 F.3d at 722. The ALJ must identify what testimony is not credible and
12 what evidence discredits the testimony. Reddick, 157 F.3d at 722; Smolen, 80 F.3d at
13 1284.

14 **B. Analysis**

15 In determining Plaintiff's RFC, the ALJ concluded that Claimant's medically
16 determinable impairments reasonably could be expected to cause his alleged
17 symptoms. (AR 160.) The ALJ, however, also found that Plaintiff's statements
18 regarding the intensity, persistence and limiting effects of these symptoms were "not
19 credible" to the extent inconsistent with the ALJ's RFC. (AR 160.) Because the ALJ did
20 not make a finding of malingering, he was required to provide clear and convincing
21 reasons supported by substantial evidence to discount Plaintiff's credibility. Smolen, 80
22 F.3d at 1283-84. The ALJ did so.

23 First, the ALJ found that there was a lack of sufficient objective medical evidence
24 to support Plaintiff's subjective symptom allegations. (AR 160-169.) An ALJ is entitled
25 to consider whether there is a lack of medical evidence to corroborate a claimant's
26 alleged pain symptoms so long as it is not the only reason for discounting a claimant's
27 credibility. Burch v. Barnhart, 400 F.3d 676, 680-81 (9th Cir. 2005). Here, Plaintiff
28 complained of significant physical pain but there was no objective evidence of any

1 musculoskeletal impairment of the spine. (AR 161.) The ALJ also found insufficient
2 objective medical evidence to corroborate continued use of wrist splints or Claimant's
3 use of assistive medical devices. (AR 161.) Plaintiff is HIV positive and claimed that he
4 has AIDS but medical records do not corroborate an AIDS diagnosis. (AR 162.) No
5 treating source has documented Plaintiff's alleged hand tremors. (AR 162.) The ALJ
6 determined Plaintiff had non-severe mental health impairments. (AR 162.) Plaintiff does
7 not address any of these findings except to note the observation of a psychologist of
8 hand tremors. (AR 162, 572.) As stated by the ALJ, however, no treating source
9 documented recurrent neurological manifestations or anything else that would be
10 consistent with hand tremors. (AR 162.)

11 Second, the ALJ made findings that Plaintiff had exaggerated his condition. An
12 ALJ may reject the credibility of a claimant who exaggerates his condition. Thomas, 278
13 F.3d at 954, 960. The ALJ found that Plaintiff told two consultative examiners that he
14 had suffered a heart attack but the treating medical records document treatment for
15 chest pain, not myocardial infarction. (AR 162.) The ALJ treated this as an
16 "overcharacterization or exaggeration of his actual condition." (AR 162.) The ALJ also
17 found that Plaintiff "overcharacterized" his HIV positive status. (AR 162.) He told Dr.
18 Sean To that he had been very sick and was told he had AIDS but in fact he takes no
19 anti-retroviral medications and receives no HIV treatment (AR 158) and medical records
20 do not support an AIDS diagnosis. (AR 162.) Plaintiff does not offer any response to
21 these findings.

22 Plaintiff disputes the ALJ's interpretation of the evidence regarding Plaintiff's
23 credibility but it is the ALJ who is responsible for resolving ambiguities in the record.
24 Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995). Where the ALJ's interpretation
25 of the record is reasonable as it is here, it should not be second-guessed. Rollins, 261
26 F.3d at 857.

1 The ALJ properly discounted Plaintiff's credibility for clear and convincing reasons
2 supported by substantial evidence. The ALJ's RFC is supported by substantial
3 evidence.

4 **II. THE ALJ'S PRW DETERMINATION IS** 5 **SUPPORTED BY SUBSTANTIAL EVIDENCE**

6 Plaintiff contends that the ALJ erred in finding at the fourth step of the sequential
7 process that Plaintiff can perform his PRW as an office manager as that job is generally
8 performed. The Court disagrees.

9 **A. Relevant Federal Law**

10 A claimant has the burden of proving that he or she no longer can perform PRW.
11 Pinto, 249 F.3d at 844. The ALJ, however, has a duty to make the requisite factual
12 findings to support his conclusion on PRW. Id. This is done by examining a claimant's
13 RFC and the physical and mental demands of the claimant's PRW. Id. at 844-45.

14 A claimant must be able to perform: (1) the functional demands and job duties of
15 a particular past relevant job as he or she actually performed it, or (2) the functional
16 demands and job duties of the occupation as generally required by employers
17 throughout the national economy. SSR 82-61; Pinto, 249 F.3d at 845. In making this
18 determination, the ALJ must make the following findings of fact:

- 19 1. A finding of fact as to the individual's RFC.
- 20 2. A finding of fact as to the physical and mental demands of the
21 past job/occupation.
- 22 3. A finding of fact that the individual's RFC would permit a return
23 to his or her past job or occupation.

24 SSR 82-62. Past work experience "must be considered carefully to assure that the
25 available facts support a conclusion regarding the claimant's ability or inability" to
26 perform the functional activities of past work. Id. The ALJ's decision "must be
27 developed and explained fully in the disability decision." Id.
28

1 Social Security regulations advise the ALJ to consider first whether the individual
2 still can do PRW as he or she actually performed it because individual jobs within a
3 category may not entail all of the requirements of a job in that category set forth in the
4 Dictionary of Occupational Titles ("DOT"). SSR 96-8p; Pinto, 249 F.3d at 845. The
5 claimant is an important source of information about his or her PRW. SSR 82-41; Pinto,
6 id. Other sources of information that may be consulted include VE testimony and the
7 DOT. 20 C.F.R. §§ 404.1560 (b)(2) and 416.960 (b)(2); SSR 82-61.

8 The ALJ then can proceed to determine whether a claimant can perform his or her
9 PRW as generally performed. Id. Typically, the best source of how a job is generally
10 performed in the national economy is the DOT. Id. An ALJ may accept VE testimony
11 that varies from the DOT, but the record must contain "persuasive evidence to support
12 the deviation." Id. at 846 (quoting Johnson v. Shalala, 60 F.3d 1428, 1435 (9th Cir.
13 1995)). The ALJ has an affirmative responsibility to ask whether a conflict exists
14 between a VE's testimony and the DOT. SSR 00-4p; Massachi v. Astrue, 486 F.3d
15 1149, 1153 (9th Cir. 2007). If there is a conflict, the ALJ must obtain a reasonable
16 explanation for the conflict and then must decide whether to rely on the VE or DOT. Id.;
17 Massachi, 486 F.3d at 1153. Failure to do so, however, can be harmless error where
18 there is no conflict or the VE provides sufficient support to justify variation from DOT. Id.
19 at 1154 n.19.

20 **B. Analysis**

21 The ALJ assessed Claimant with a light work RFC limited to occasional
22 keyboarding 30 minutes at a time up to 4 hours in an 8 hour day, occasional overhead
23 reaching with the right dominant upper extremity and frequent (not constant) fine hand
24 manipulation bilaterally. (AR 158.) With this RFC, the ALJ determined that Plaintiff
25 could perform his PRW as an office manager as it is generally performed. (AR 169.)

26 The VE testified at the January 11, 2012 hearing that Claimant had PRW as a
27 bookkeeper (DOT 210.382-014) and office manager (DOT 169.167-034). (AR 169.)
28 These were sedentary jobs that required medium exertion as actually performed by

1 Claimant. (AR 169.) Thus, the ALJ's light work RFC excluded these jobs as actually
2 performed. The VE further testified that Claimant could not perform the bookkeeper job
3 as generally performed (AR 79) but that he could perform the office manager job as
4 generally performed. (AR 169.) The VE distinguished the two occupations on the basis
5 that the keyboarding required for the office manager position is "more sporadic" than it is
6 for the bookkeeping job. (AR 79.) The VE's distinction is consistent with the ALJ's RFC
7 limitation to occasional keyboarding.

8 Plaintiff contends that the ALJ's PRW finding is erroneous because the ALJ
9 improperly segregated the Claimant's PRW according to the least demanding work
10 functions. Plaintiff testified that for both the bookkeeping and office manager jobs he
11 was performing tasks required by both jobs. (AR 76.) His PRW was a composite or
12 hybrid job with significant elements of two occupations. Plaintiff contends that the VE
13 improperly excluded from consideration the bookkeeping or total requirements of the
14 office manager job and simply segregated out the least demanding office manager
15 functions.

16 The Court disagrees. Claimant had two different occupational designations,
17 bookkeeper and office manager. The VE testified that the office manager occupation
18 had a wider variety of duties than the bookkeeping job and that, while it required some
19 bookkeeping keyboarding functions, they were "more sporadic than with the
20 bookkeeper." (AR 79.) The VE did not exclude bookkeeper keyboarding functions from
21 her assessment of the office manager position nor consider only non-keyboarding office
22 manager duties. The VE did not say Claimant was unable to perform any bookkeeping
23 or keyboarding work. Plaintiff has misframed the issue and would evaluate the office
24 manager position as if it required greater keyboarding functions than the VE testified was
25 true.

26 Plaintiff's case authority is distinguishable. Plaintiff cites Valencia v. Heckler, 751
27 F.2d 1082, 1086 (9th Cir. 1985) but in that case the claimant was an agricultural worker
28 doing medium exertional work but occasionally doing light work sorting tomatoes. The

1 ALJ improperly characterized Plaintiff's PRW as light work based on tomato sorting,
2 excluding from consideration other medium level agricultural work required for the job.
3 That mischaracterization did not occur here. As already noted, the VE did not exclude
4 from consideration keyboarding functions that were "more sporadic than with the
5 bookkeeper." (AR 79.) Similarly, in Carmickle v. Comm'r, Soc. Sec. Adm., 533 F.3d
6 1155, 1166-67 (9th Cir. 2008), the ALJ and VE improperly classified a claimant's PRW
7 as a light work supervisory job even though 80% of the time Claimant was performing
8 medium duty manual labor which was excluded from consideration. Again, the ALJ and
9 VE did not exclude from consideration the "more sporadic" bookkeeping keyboarding
10 functions of Claimant's office manager job. In Vertigan v. Halter, 260 F.3d 1044, 1051
11 (9th Cir. 2001), the ALJ erroneously characterized a claimant's PRW as a receptionist
12 and cashier even though she had never worked as a cashier and her work as a
13 pharmacy clerk only required cashier work occasionally. Unlike in Vertigan, the ALJ and
14 VE did not parse out or exclude bookkeeping keyboarding functions from Plaintiff's office
15 manager job.

16 Plaintiff's last argument is that the VE's testimony that the office manager's
17 keyboarding functions are more sporadic than a bookkeeper's conflicts with the DOT.
18 The Court disagrees.

19 The DOT provides the following description of the duties of an office manager
20 (169.167-034):

21 Coordinates activities of clerical personnel in establishment or
22 organization: Analyses and organizes office operations and procedures,
23 such as typing, bookkeeping, preparation of payrolls, flow of
24 correspondence, filing, requisition of supplies, and other clerical services.
25 Evaluates office production, revises procedures, or devises new forms to
26 improve efficiency of workflow. Establishes uniform protection, retrieval,
27 transfer, and disposal of records. Plans office layouts and initiates cost
28 reduction programs. Reviews clerical and personnel records to ensure

1 completeness, accuracy, and timeliness. Prepares activities reports for
2 guidance of management, using computer. Prepares employee ratings
3 and conducts employee benefit and insurance programs, using computer.
4 Coordinates activities of various clerical departments or workers within
5 department. May prepare organizational budget and monthly financial
6 reports. May hire, train and supervise clerical staff. May compile, store,
7 and retrieve managerial data, using computer.

8 (Emphasis added.) Plaintiff does not explain how the above description conflicts with
9 the VE's testimony or the ALJ's RFC. The VE's testimony that the office manager's
10 keyboarding functions are "more sporadic" than the bookkeeper's is not inconsistent with
11 the above office manager description. The VE's distinction between the two occupations
12 is supported by a comparison of the DOT job descriptions for both occupations. The
13 bookkeeper occupation characterizes the functions of numerical recording-
14 recordkeeping and accounting, auditing and bookkeeping services as "significant."
15 (DOT 210.382-014.) By comparison, the DOT job description for office manager regards
16 numerical recording-recordkeeping as "not significant." (DOT 169.167-034.) The VE's
17 recognized expertise, moreover, provides the necessary foundation for his or her
18 testimony. Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005). No additional
19 foundation is required. Id. The ALJ reasonably relied on the VE's testimony.

20 Plaintiff also contends that the VE's testimony conflicts with the DOT limitation to
21 frequent fingering for the office manager job. (DOT 169.167-034.) Again, Plaintiff does
22 not explain why the VE's testimony conflicts with the DOT. The ALJ's hypothetical
23 question to the VE includes a limitation to frequent fingering as contained in the DOT.
24 (AR 78.) So does the ALJ's RFC. (AR 158.) The VE testified that with the ALJ's RFC
25 limitations the Claimant could perform the office manager position as generally
26 performed. (AR 79.) The mere fact that the office manager job includes some computer
27 work (keyboarding) is not inconsistent with the RFC limitation to occasional keyboarding
28 up to 4 hours a day. Plaintiff again attempts to equate the keyboarding demands of both

1 the office manager and bookkeeping jobs but “fingering” in the office manager DOT
2 description need not be limited to keyboarding duties. There is nothing inconsistent
3 between a limitation to occasional keyboarding up to 4 hours of keyboarding and two
4 hours of non-keyboarding fingering. Again, the VE’s recognized expertise provides the
5 necessary foundation for her testimony. Bayliss, 427 F.3d at 1218. The ALJ reasonably
6 relied on the VE’s testimony.

7 The Court observes that the ALJ did not ask the VE if her testimony was
8 consistent with the DOT. The error was harmless, however, because there was no
9 conflict between the VE’s testimony and the DOT, Massachi, 468 F.3d at 1154 n.19, and
10 in any event the ALJ found that the VE clarified any distinctions from the DOT by noting
11 that the keyboarding functions of the office manager job were more sporadic than with
12 the bookkeeping occupation. (AR 169.)

13 The ALJ’s determination at the fourth step of the sequential process that Plaintiff
14 could perform his PRW as an office manager as generally performed is supported by
15 substantial evidence.

16 * * *

17 The ALJ’s nondisability determination is supported by substantial evidence and
18 free of legal error.

19 **ORDER**

20 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the
21 Commissioner of Social Security and dismissing this case with prejudice.

22
23 DATED: October 9, 2014

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE